

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

THE BRYCE COMPANY, LLC,)	
BPX FILMS, LP, THOMAS J. BRYCE,)	
AND PAULO L. TEIXEIRA,)	
)	
Plaintiffs,)	
)	Civil Action No. _____
v.)	
)	
FEDERAL INSURANCE COMPANY,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Comes now Defendant Federal Insurance Company (“Federal”) and, pursuant to 28 U.S.C. § 1446(a), files this Notice of Removal showing:

1. Federal is the only defendant in the state court action styled *The Bryce Company, LLC, BPX Films, LP, Thomas J. Bryce, and Paulo L. Teixeira v. Federal Insurance Company*, Cause No. 09-1873-3, pending in the Chancery Court of Shelby County, Tennessee, Thirtieth Judicial District at Memphis (the “State Court Action”).

2. Plaintiffs The Bryce Company, LLC, BPX Films, LP, Thomas J. Bryce, and Paulo L. Teixeira (collectively, “Plaintiffs”) filed their Complaint for Declaratory Relief, Monetary Damages and Other Relief (the “Complaint”) in the State Court Action on September 10, 2009. The Summons was issued on September 10, 2009. Federal’s agent for service of process, the Tennessee Commissioner of Insurance, was served with the Summons and the Complaint on September 16, 2009. This Notice of Removal is therefore timely filed within thirty (30) days of service of process pursuant to 28 U.S.C. § 1446(b).

3. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441, because the case is a civil action between citizens of different states wherein the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. In their Complaint, Plaintiffs assert causes of action against Federal for declaratory relief, breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of the Tennessee Consumer Protection Act.

5. Plaintiffs contend that they are entitled to coverage under the ForeFront Portfolio Policy No. 8158-4885 (the "Policy") issued by Federal to Bryce Corporation for a lawsuit brought against them styled *Nova Capital, LLC and Jorge Bustamante v. The Bryce Company, LLC, BPX Films, LP, Thomas J. Bryce, Individually, and Paulo Teixeira*, Cause No. 07-06481-K, in the 192nd District Court of Dallas County, Texas (the "Underlying Lawsuit").

6. Plaintiffs seek a declaratory judgment that the Policy requires Federal to defend and provide coverage for the claims asserted against them in the Underlying Lawsuit.

7. Plaintiffs also seek recovery from Federal for the actual damages allegedly sustained due to Federal's alleged breach of the Policy and alleged breach of the implied covenant of good faith and fair dealing by denying coverage for the Underlying Lawsuit. Specifically, Plaintiffs seek reimbursement of the costs, fees, expenses, and monies Plaintiffs have expended in the defense of the Underlying Lawsuit, which currently exceed \$600,000.00.

8. Additionally, Plaintiffs seek recovery of actual damages, treble damages, and attorneys' fees and costs based on their allegation that Federal's denial of coverage constitutes an unfair or deceptive practice in violation of the Tennessee Consumer Protection Act.

9. In sum, Plaintiffs seek recovery from Federal for the \$600,000.00 incurred to date in the defense of the Underlying Lawsuit, the amounts that will be expended in the future in the defense of the Underlying Lawsuit, any amounts that may be awarded to the claimants in the Underlying Lawsuit, treble damages, and attorneys' fees and costs. Therefore, the total amount of recovery sought by Plaintiffs from Federal in this lawsuit exceeds \$75,000.00, thereby satisfying the amount in controversy requirement under 28 U.S.C. § 1332(a).

10. Plaintiff The Bryce Company, LLC is a limited liability company organized under the laws of Nevada and has its principal place of business in Tennessee. The citizenship of the members of The Bryce Company, LLC is not presently known. However, upon information, none of the members of The Bryce Company, LLC are citizens of either New Jersey or Indiana. Under applicable law, therefore, The Bryce Company, LLC is (both now and when this action was filed) a citizen of the States of Nevada, Tennessee and possibly states other than New jersey or Indiana.

11. Plaintiff BPX Films, LP is a limited partnership organized under the laws of Texas and has its principal place of business in Texas. The partners of BPX Films, LP are not presently known. However, upon information, none of the partners of BPX Films, LP are citizens of New Jersey or Indiana. Under applicable law, therefore, BPX Films, LP is (both now and when this action was filed) a citizen of the State of Texas and possibly additional state other than New Jersey or Indiana.

12. Plaintiff Thomas J. Bryce is a natural person residing in Shelby County, Tennessee. Under applicable law, therefore, Thomas J. Bryce is (both now and when this action was filed) a citizen of the State of Tennessee.

13. Plaintiff Paulo L. Teixeira is a natural person residing in Shelby County, Tennessee. Under applicable law, therefore, Paulo L. Teixeira is (both now and when this action was filed) a citizen of the State of Tennessee.

14. Defendant Federal is a corporation organized under the laws of Indiana and has its principal place of business in New Jersey. Under applicable law, therefore, Federal is (both now and when this action was filed) a citizen of the States of Indiana and New Jersey.

15. Because Plaintiffs are citizens of Nevada, Tennessee, Texas and possibly additional states other than New Jersey or Indiana, and Federal is a citizen of Indiana and New Jersey, no Plaintiff is a citizen of the same state as any Defendant. Pursuant to 28 U.S.C. § 1332, complete diversity of citizenship exists between the parties, and, therefore, diversity jurisdiction existed at the time Plaintiffs filed the State Court Action, and diversity jurisdiction exists now.

16. Removal of this case to this Court is proper under 28 U.S.C. § 1441, because this is a civil action of which the district courts of the United States have original jurisdiction.

17. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders filed in the State Court Action as of this date and a copy of the court's docket sheet are attached to and filed contemporaneously with this Notice of Removal.

18. Promptly after the filing of this Notice of Removal, Federal shall give written notice of the removal to Plaintiffs through their attorney of record and to the clerk of the state court as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Federal Insurance Company requests that this action now pending against it in the Chancery Court of Shelby County, Tennessee, Thirtieth Judicial District at Memphis, be removed to the United States District Court for the Western District of Tennessee, Western Division, as an action properly removable thereto and seeks general relief.

**BUTLER SNOW O'MARA
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served on the following counsel of record on this the 16th day of October, 2009.

Via Hand Delivery

Charles W. Hill
Glankler Brown, PLLC
1700 One Commerce Square
Memphis, TN 38103
ATTORNEY FOR PLAINTIFFS

s/ Daniel W. Van Horn
Daniel W. Van Horn